

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
	:	DAUPHIN COUNTY, PENNSYLVANIA
	:	
vs.	:	NO. 660 C.D. 1990
	:	
WILLIAM M. KELLY, JR.	:	CHARGE: CRIMINAL HOMICIDE

ORDER OF COURT

AND NOW, this day of December, 1992, upon consideration of the Commonwealth's Petition to Vacate Sentence Based Upon After-Discovered Evidence;

IT IS HEREBY ORDERED AND DECREED that Judge Schaffner's Order of Sentence of October 1, 1990, is vacated, and an expedited hearing is scheduled for _____ at _____ .m. in Courtroom # _____ .

This Order shall be deemed to be sufficient to authorize all actions necessary to implement its provisions.

BY THE COURT:

Warren G. Morgan, P.J.

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
 : DAUPHIN COUNTY, PENNSYLVANIA
 :
 v. : NO. 660 C.D. 1990
 :
 WILLIAM M. KELLY, JR. : CHARGE: CRIMINAL HOMICIDE

ORDER OF COURT

AND NOW, this 8th day of January, 1993, following a hearing on the Commonwealth's Petition to Vacate Sentence based upon after-discovered evidence;

And following the issuance of an Order by this Court to vacate said sentence;

And upon a motion to dismiss by the Defendant through his counsel, David Foster, Esq., and following concurrence by the District Attorney of Dauphin County;

IT IS HEREBY ORDERED AND DECREED that charges of criminal homicide against William M. Kelly, Jr., are dismissed.

This Order shall be deemed to be sufficient to authorize all actions necessary to implement its provisions.

BY THE COURT,

Warren G. Morgan
 Warren G. Morgan, P.J.

Verified: A True Copy
 JAN 08 1993, 19
Council A. White
 Clerk of the Court

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
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 vs. : NO. 660 C.D. 1990
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COMMONWEALTH'S PETITION TO VACATE SENTENCE
BASED UPON AFTER-DISCOVERED EVIDENCE

TO THE HONORABLE WARREN G. MORGAN, PRESIDENT JUDGE OF SAID COURT:

AND NOW, comes Richard A. Lewis, District Attorney of Dauphin County, and William T. Tully, First Assistant District Attorney, who file this petition to vacate sentence based upon after-discovered evidence, and in support thereof, aver the following:

1. On October 1, 1990, the above-captioned defendant entered a plea of guilty to the charge of Murder in the Third Degree, before the Honorable Herbert A. Schaffner, pursuant to a plea agreement with the District Attorney's Office. The defendant was sentenced to a term of ten to twenty years. The defendant was represented by counsel at his guilty plea hearing.
2. The charge to which the aforementioned defendant entered said plea arose from an incident which occurred either in the late night of January 8 or the early morning of January 9, 1990, when the victim, [REDACTED], was severely beaten to death and her body buried in a shallow grave in the Swatara Township landfill.

3. Through a physical description of the last person seen in the presence of the victim, police were provided with the possible name of William M. Kelly, Jr.

4. Upon questioning by the police, the above-captioned defendant eventually confessed, in writing, to the killing, and appeared to be able to provide a somewhat detailed account of the murder.

5. Two witnesses who saw [REDACTED] on January 8, 1990, identified the defendant as the person who was seen with her at Dinger's Cafe/Bar shortly before her death. The defendant admitted to being in Dinger's that evening.

6. Because of the well-documented, preexisting psychiatric condition of the defendant, the defendant may not have had the capacity to form the specific intent to kill [REDACTED]; therefore, the Commonwealth agreed to a plea of Third Degree Murder.

7. On August 12, 1992, Dauphin County Detectives located two other bodies (i.e., skeletal remains) in the Swatara Township landfill, related to another perpetrator, who has since been charged with murder in these cases.

8. Because of similarities between those two homicides and the murder of [REDACTED], Dauphin County District Attorney Richard A. Lewis ordered a reinvestigation of the William Kelly murder case.

9. Investigators determined that, because of what appeared to be a common modus operandi between the two newly discovered homicides, and the [REDACTED] homicide, it was necessary to reinterview William Kelly, as well as contact Kelly's trial counsel, David Foster, Esquire, of Costopoulos, Foster and Fields.

10. Investigators reinterviewed Kelly, and he recanted his guilty plea and protested his innocence, yet continued to give conflicting information to the investigators regarding his knowledge of the incident. Also, when Chief County Detective Thomas Brennan first observed Kelly, he was struck by the similarity of appearance between Kelly and the other suspect.

11. Based upon the interviews with Kelly, arrangements were made to have Kelly interviewed by a forensic psychiatrist who specializes in prisoner cases in order to evaluate why Kelly provided "mixed signals" to investigators, and determine whether he could be innocent, yet confess and plead guilty to third degree murder.

12. When Kelly was originally charged, his DNA was compared against the DNA extracted from the vaginal area of [REDACTED] corpse, and it was determined by Cellmark Laboratories that the DNA recovered from the victim's body was not Kelly's. However, since Kelly acknowledged having intercourse with the victim, but denied ejaculating, neither side regarded the testing as significant at the time.

13. A blood sample was taken from the suspect in the two newly discovered homicides, and was submitted to Cellmark for comparison with the DNA recovered in the [REDACTED] case.

14. On December 21, 1992, Detectives and First Assistant District Attorney William Tully traveled to Cellmark Laboratories to review the test results and all of the underlying autorads, and determined that the DNA recovered from [REDACTED] body did not match Kelly's sample, but positively matched the sample taken from the other suspect.

15. One of the aforementioned eyewitnesses was questioned regarding her earlier identification of Kelly, and indicated that she was not positive of her earlier identification. Because of the similar appearance and speech patterns of Kelly and the suspect in the two newly discovered cases, she was given the opportunity to test her identification by viewing a photo array containing photos of Kelly, as well as seven other individuals, including the suspect in the newly discovered cases. She not only failed to identify Kelly, but positively identified the suspect in the newly discovered cases. The results of her identification were subsequently confirmed by polygraph examination.

16. The other aforementioned eyewitness also expressed reservations as to his earlier identification, but declined to identify anyone else.

17. On September 28, 1992, Chief County Detective Thomas Brennan had occasion to interview the suspect in the two recently discovered homicides, and that suspect admitted that he was responsible for the homicide.

18. On December 4, 1992, Kelly was interviewed by forensic psychiatrist, Herbert E. Thomas, M.D. On December 21, 1992, Dr. Thomas faxed a copy of his report to the District Attorney's Office, which concluded in pertinent part:

(a) That William Kelly suffered from three serious conditions: Psychiatric complications including diagnosis of manic-depression (for which he received lithium carbonate medications), chronic alcoholism, and a history of blackouts.

(b) The combination of the three disorders made Kelly particular susceptible to not being able to distinguish what he did in reality from what the police believed that he might have done.

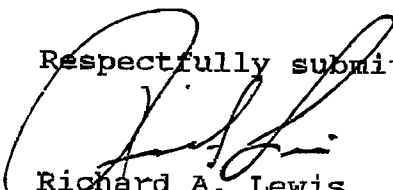
(c) The aforementioned psychiatric conditions, combined with his extremely low intelligence, created an extremely rare scenario where Kelly may have actually believed that he killed [REDACTED] during one of his blackouts, and began to incorporate information provided by the police into his own memory as to what might have happened.

(d) Such a "bizarre" set of circumstances had never before been encountered by Dr. Thomas, but he believes that they would explain Kelly's confession and plea to a crime which he may not have committed.

19. The aforementioned information constitutes sufficient after-discovered evidence to justify the vacating of Mr. Kelly's current order of sentence on the charge of Third Degree Murder.

WHEREFORE, the District Attorney of Dauphin County, in furtherance of his sworn duty to seek justice, respectfully requests this Honorable Court to vacate the order of sentence of Judge Herbert A. Schaffner, and conduct an expedited hearing to determine what further actions the interests of justice so dictate.

Respectfully submitted,



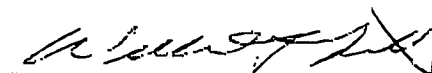
Richard A. Lewis
District Attorney



William T. Tully
First Assistant District Attorney

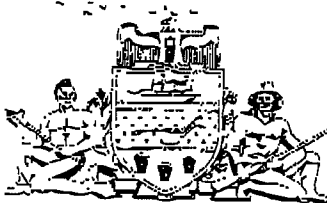
VERIFICATION

I verify that the facts contained in the above pleading are true and correct to the best of my knowledge, information and belief. I understand that the facts herein are verified subject to the penalties for unsworn falsification to authorities under Crimes Code, Section 4904 (18 Pa.C.S. 4904).



William T. Tully
First Assistant District Attorney
Attorney for Commonwealth

RICHARD A. LEWIS
DISTRICT ATTORNEY



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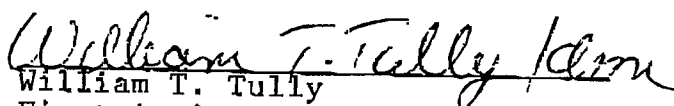
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**Office of the District Attorney
Dauphin County
Pennsylvania**

CERTIFICATE OF SERVICE

In re: Commonwealth v. William M. Kelly, Jr.
No. 660 C.D. 1990
Charge: Criminal Homicide

This is to certify that a copy of the Commonwealth's Petition to Vacate Sentence Based Upon After-Discovered Evidence in the above-captioned matter was sent, on the below stated date, to the defendant's counsel, David J. Foster, Esquire, at Costopoulos, Foster & Fields, 831 Market Street, Lemoyne, Pennsylvania 17043.


William T. Tully
First Assistant District Attorney

Dated: December 23, 1992